

000301

City of San Diego
MEMORANDUM

DATE: April 3, 2008
TO: CITY ATTORNEY – Catherine Bradley
FROM: Office of the City Clerk – Mary Zumaya
SUBJECT: Item 332 B of the April 1, 2008 p.m. City Council Meeting

ITEM-332: Tax Ordinance Amending Retirement Plan Consistent with IRS Compliance Statement.

MAYOR SANDERS' RECOMMENDATION:

Introduce the ordinance in Subitem B:

Subitem-B: (O-2008-133)

Introduction of an Ordinance amending Chapter 2, Article 4, of the San Diego Municipal Code by amending Division 1, Sections 24.0103 and 24.0103.1; by amending Division 2, Sections 24.0201 and 24.0202; by amending Division 3, Sections 24.0301 and 24.0302; by amending Divisions 8, Section 24.0801; by amending Division 9, Sections 24.0901 and 24.0902; by amending Division 10, by renumbering Section 24.1000 to Section 24.1001, Section 24.1005 to Section 24.1003, by amending the renumbering Section 24.1010 to 24.1004, by renumbering Section 24.1011 to Section 24.1005, Section 24.1012 to Section 24.1006, Section 24.1013 to Section 24.1007, and Section 24.1014 to Section 24.1008, and by adding Section 24.1009; by repealing Division 12, Section 24.1203 and amending Section 24.1204; by repealing Division 13, Section 24.1310(c), by repealing Division 14, Section 24.1402(b)(9), by repealing Division 15, Section 24.1502(a)(5); all relating to the San Diego City Employees' Retirement System.

SUPPORTING INFORMATION: On July 12, 2005, the SDCERS Board of Administration ("Board") filed a Form 5300 application with the Internal Revenue Service ("IRS"), seeking a favorable determination letter to confirm its tax-qualified status. On that date, the Board also filed a request for a compliance statement under the Voluntary Correction Program ("VCP") of the IRS' Employee Plans Compliance Resolution System. The VCP is a program that allows a plan to voluntarily disclose to the IRS plan document or operational qualification failures it has discovered in its plan, propose corrections and ultimately receive IRS approval of corrections.

SDCERS' initial VCP filing concerned the "presidential leave" benefit that was created by the City to allow the presidents of certain City employee labor unions to continue to participate in SDCERS while serving as union presidents, and to receive a retirement benefit based on union compensation and combined City and union service. Between July 2005 and August 2006, SDCERS filed eight supplemental VCP filings that identified other violations, and proposed corrections and remedial plan amendments.

On December 18, 2007, the IRS issued a proposed Compliance Statement, resolving all of SDCERS' VCP submissions. The Compliance Statement was signed by the Board President, on behalf of the Board, and by the City's Chief Operating Officer, on behalf of the City, on December 20, 2007. The Board unanimously ratified the Compliance Statement on December 21, 2007. The IRS signed the Compliance Statement on January 10, 2008. The Compliance Statement requires that the City Council adopt certain of the amendments contained in this ordinance.

On January 25, 2008, the IRS issued SDCERS a favorable Determination Letter, confirming SDCERS' tax-qualified status. The Determination Letter is contingent upon the City Council's adoption of all of the amendments contained in this ordinance (which has been approved by the IRS) on or before April 25, 2008.

The Technical Tax Ordinance contains the following amendments, which are in most cases required by both the Determination Letter and the Compliance Statement:

- 1) amendments necessary to conform the plan to relevant provisions of the following federal laws: the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1990 (collectively referred to as "TRA '86"), the Unemployment Compensation Amendments of 1992 ("UCA '92"), the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93"), the Uruguay Round Agreements Act ("GATT"), the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Small Business Job Protection Act of 1996 ("SBJPA"), the Taxpayer Protection Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA '98"), and the Community Renewal Tax Relief Act of 2000 ("CRA" and together with GATT, USERRA, SBJPA, TRA '97, and RRA '98 are referred to as "GUST"), and interim good faith compliance amendments with respect to the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") (required by the Compliance Statement (Failures #1-3);
- 2) retroactive elimination of the "presidential leave" benefit (required by the Compliance Statement (Failure #4);
- 3) retroactive elimination of the "cashless leave conversion" benefit, which allowed City employees in the San Diego Firefighters Local 145 bargaining unit to convert to SDCERS service credit the "cash equivalent" of the accumulated annual leave they accrued after June 30, 2002 (required by the Compliance Statement (Failure #5);

- 4) elimination, retroactive to July 1, 2005, of all SDCERS Plan provisions relating to the 401(h) retiree health account, and all provisions that require or allow the use of SDCERS Trust Fund assets to pay retiree health benefits or the costs of administering retiree health benefits (required by the Compliance Statement (Failure #7);
- 5) retroactive elimination of the SDCERS Plan provision stating that employer contributions will be based upon a Memorandum of Understanding entered into between the City and SDCERS, substituting language providing that effective, July 26, 2004, the amount of employer contributions the City must pay to the Plan will be determined by the Board based upon the advice of its Actuary (required by the Compliance Statement (Failure #14); and
- 6) provision of state-mandated domestic partner benefits retroactive to January 1, 2005, to conform to plan operation (required by the Compliance Statement (Failure #13)); and
- 7) provisions stating that the Board will adopt by Rule: (a) member contribution rates, (b) interest rates credited to member contribution and DROP accounts, and (c) mortality, service and other tables it deems necessary, and that these Rules are incorporated into the SDCERS Plan Document (required by the Determination Letter).

The IRS has negotiated and approved all of the amendments contained in this Ordinance. This Ordinance has also been reviewed and approved by attorney Samuel Hoffman, tax counsel retained by the City for this purpose. Mr. Hoffman's analysis and conclusions regarding the IRS Voluntary Correction Plan Settlement Agreement and the proposed Tax Ordinance are presented in Attachment 2. Final adoption of this Ordinance, on or before April 25, 2008, is necessary to maintain the qualified status of the SDCERS Plan.

FISCAL CONSIDERATIONS:

The proposed Ordinance formally eliminates or amends a number of pension plan elements. Some of these changes have already been instituted. The changes have financial impacts to certain employees, the City and the Retirement System. The status of implementation as well as a description of the impacts are described in Mr. Hoffman's letter (Attachment 2).

The IRS's favorable determination letter is contingent upon the adoption of these amendments. Failure to adopt the amendments could result in the disqualification of the plan, which would result in immediate taxation of vested benefits to the members, taxation of member contributions, and taxation of the trust fund's earnings. For FICA-covered positions, the employer contributions to a disqualified plan would be subject to FICA taxation as well as income taxation. Employees would lose favorable distribution provisions - for example, they would be unable to rollover distributions from the disqualified plan.

Goldstone

COUNCIL ACTION WAS:***Subitem-B: Motion***

by Madaffer, second by Peters to **introduce as amended** the IRS-Approved ordinance in Subitem B with the inclusion of the **§24.0103 Definitions "Rule(s)"**.

Prepare a separate parallel ordinance as referred to in my attachment titled, "Transcript of Tax Ordinance Retirement Plan IRS Compliance Statement_Item 332".

Please prepare the Ordinance to reflect Council's Action using the appropriate language, and return to the Dockets Section at the City Clerk's Office for further processing.

COUNCIL VOTE WAS:

Unanimous; all present.

Mary Zumaya, Deputy City Clerk

Item 332 Amending the Tax Ordinance Retirement Plan Consistent with the IRS Compliance Statement

HOFFMAN: A determination letter is given from the IRS. It is just a one and a half page sheet of paper. It says we've looked at it as if the plan is qualified and often times, as the IRS says, you must pass the amendment that is attached and the scope of the determination letter is based on the information that you gave them because the IRS has to formulate their opinion. So if you don't tell them something and they say it is a qualified plan but you did not tell them anything about a particular issue you cannot rely on--the IRS can still criticize you. So the legal question here is with respect to this determination letter. Was the IRS alerted to the fact that the union presidents were spending their full time doing union work and not doing city work even though they were on the city payroll? When I put that language in there, I thought that would be a good idea for the City based on all the issues that have happened that we ensure that the facts are presented to the IRS to make sure that they know that these union presidents are in fact spending a bulk of their time being union presidents.

Now with respect to the current letter, I talked to Ms. Mumford and when she told me they had been given these MOU's and when she had said they are on special assignment, while it is not the lengthiest description of it, it does say that the union president will be a full time city employee. It says the president will retain the rights and duties and during normal working hours the president will be subject to applicable provisions of law and normal working hours which means 8:00 a.m. to 5:00 p.m. Monday through Friday or an equivalent schedule approved in advance by the City Manager.

It struck me, as I read all this, that the IRS has enough information to be informed that these union presidents were not acting as payroll clerks or they were not acting as policeman or fireman. They were acting as union presidents but the city continued to have some control over their hours. The City Manager had to set it so my conclusion, after I looked at all that, was that that determination letter approved the union presidential

leave with the unions being on full salary but doing mostly union work as reflected in this MOU and in the follow up letter.

We already satisfied it through this determination letter. The reason I thought it was important was that you have another determination letter coming up and you'll have in five years another one and it would be, in my opinion, important that those facts how they evolve over time be fully laid out to the IRS in the determination letter so that when you get that one and a half page letter that says this is a qualified plan you know that they were told about all aspects of presidential leave and that was the point of that.

In answer to Mr. Madaffer's question, you certainly could do that if you wanted to in a separate ordinance you could insist that that sort of factual presentation be made. You could do it here, as far as I'm concerned. I do not believe that will invalidate the favorable determination although I agree and I have said that we should not tamper with this because the IRS has blessed it. Those are my conclusions and my recommendations here.

AGUIRRE: If what Mr. Hoffman says is that we can achieve the same result by just doing a companion ordinance, for the second reading, we will come back with an ordinance we can pass. The other ordinance basically incorporating the same language which gives the City the protection and we can approve this one as is.

PETERS: When the second reading of this comes back pursuant to this motion, we will bring a separate parallel ordinance incorporating the language that Mr. Hoffman had said.



Explanation Of Technical Tax Ordinance

San Diego City Employees' Retirement System

April 1, 2008

Terry A. M. Mumford
Terry.Mumford@icemiller.com

SDCERS And The IRS Reached Agreement in Voluntary Correction Program

- ❑ December 21, 2007 – SDCERS Board approved Compliance Statement with IRS.
- ❑ January 10, 2008 – IRS signed off on Compliance Statement.
- ❑ January 25, 2008 – IRS issues favorable determination letter for SDCERS.
- ❑ Although these are two separate documents, they are the result of a 2½ year process designed to resolve all tax compliance issues – both in the Municipal Code and in SDCERS operation.

SDCERS Board Took This Path To Make SDCERS A Model of Best Practices

□ "The resolution of the VCP process with the IRS is a tremendous accomplishment for SDCERS. We proactively approached the IRS and identified past violations, and then worked cooperatively with them to develop and implement a remediation plan.... I am proud of the continued commitment of SDCERS Board members and staff to get it right and keep it right."

— SDCERS Board President Thomas Hebrank, 12/21/07

Obtaining IRS Approval Of The Compliance Statement And Obtaining A Favorable Determination Letter Is A Good Result

- ❑ These two documents protect employees, retirees, and taxpayers by preserving the qualified status of the SDCERS Plan.
- ❑ These two documents protect taxpayers because the IRS is not seeking any penalty payments, and is not requiring the City to make any additional contributions.

The Qualified Status of SDCERS Depends On The Council's Adoption Of The Tax Ordinance

- ☐ The favorable determination letter is subject to adoption of Technical Tax Ordinance.
- ☐ Many aspects of the Compliance Statement are also dependent on adoption of Technical Ordinance.

The Technical Ordinance Has Been Approved, Word-By-Word, By The IRS

- ☐ The Technical Ordinance was attached to the IRS determination letter that the plan was qualified.
- ☐ The IRS has said that the Technical Ordinance must be adopted by April 25, 2008.
- ☐ Failure to adopt the Technical Ordinance (and failure to comply with the Compliance Statement) means that SDCERS would not be considered by the IRS to be qualified.

The Amendments In The Technical Ordinance Fall Into The Following Categories

- ☐ Category #1: Adoption of IRS required language into the plan document.
- ☐ Category #2: Bringing the plan into compliance with state law and City legal settlements.
- ☐ Category #3: Elimination of provisions that are not permissible under the Internal Revenue Code.
- ☐ Category #4: Definition of the "plan document."

Category #1: The Tax Ordinance Contains Required Amendments To Maintain Compliance With Federal Law

- ☐ The Municipal Code had not been updated over the years to fully comply with federal law changes. The Tax Ordinance contains every change that needs to be made to bring the Municipal Code into compliance.
- ☐ The Tax Ordinance eliminates SDCERS Plan provisions relating to the 401(h) retiree health account and all provisions that require or allow the use of SDCERS Trust Fund assets to pay retiree health benefits or the costs of administering retiree health benefits.
- ☐ The Compliance Statement also requires that these changes be made to that the plan can be operated consistently with the Municipal Code and thereby in compliance with federal law.

Category #2: The Tax Ordinance Brings The Plan Into Compliance With State Law and City Legal Settlements

- ☐ The Municipal Code had not been timely amended to incorporate the state law recognition of domestic partners. The Tax Ordinance fixes that.
- ☐ The Municipal Code had not been amended to incorporate the Gleason settlement. The Tax Ordinance fixes that.

Category #3: The Tax Ordinance Eliminates Provisions That Are Not Permissible Under The Internal Revenue Code

- ☐ The IRS has determined that the previous Presidential Leave program cannot be part of the SDCERS plan. The IRS has required that this program be retroactively removed. A new provision has been added.
- ☐ The IRS has determined that the "cashless leave" program cannot be part of the SDCERS plan. The IRS has required that this program be retroactively removed.

Category #4: The Tax Ordinance Defines The Plan Document

- ☐ The Tax Ordinance brings specificity to the concept of "plan document" by identifying those Board Rules that will be considered to be part of the plan document.
- ☐ The Tax Ordinance contains a high level of specificity with regard to compliance provisions.

The Compliance Statement Identifies "Failures" and Corrections For The City, The Council, And SDCERS To Complete

- ☐ Failures #1-3: Failure to Amend the Municipal Code to comply with federal law. These items are resolved by the Tax Ordinance.
- ☐ Failure #4: Incumbent Presidential Leave. Part of this item is resolved by the Tax Ordinance (repeal and replacement). SDCERS is required to recalculate the benefits of certain union presidents.
- ☐ Failure #5: Cashless Leave. Part of this item is resolved by the Tax Ordinance (repeal). SDCERS is required recalculate benefits of certain members.

The Compliance Statement Identifies "Failures" and Corrections For The City, The Council, And SDCERS To Complete (Cont'd.)

- ☐ Failures #6-7: Retiree Health Benefits. The Tax Ordinance partially addresses this failure. SDCERS has changes its procedures to implement the IRS correction.
- ☐ Failures # 8, 9, 10, 12: Failure to operate the plan in accordance with various Internal Revenue Code Sections. The Tax Ordinance partially addresses these failures. SDCERS has implemented new procedures to achieve compliance.
- ☐ Failure #11: Misinterpretation of Corbett Settlement. The correction of this failure has been implemented by a recalculation of benefits.

The Compliance Statement Identifies "Failures" and Corrections For The City, The Council, And SDCERS To Complete (Cont'd.)

- ☐ Failure #13: Domestic Partner Benefits. This failure is corrected by the Tax Ordinance. SDCERS had implemented this provision prior to the amendment.
- ☐ Failure #14: Annual City Contributions. This failure is corrected by the Tax Ordinance. SDCERS had implemented this provision prior to the amendment.

Why Should the Council Act Now? What Is The Impact Of Disqualification?

- ☐ Qualified plans have the most favorable tax treatment for employees, retirees, and survivors under the Internal Revenue Code.
- ☐ No other type of plan provides equivalent tax treatment.
- ☐ Qualified *governmental* plans have important tax provisions designed to address government rather than private sector employment.
- ☐ All of that would be lost upon disqualification.

Maintaining Qualified Governmental Status Preserves Favorable Taxation of Employee Contributions

- ☐ If SDCERS is qualified, employee contributions that are made to SDCERS are made on a pre-tax basis.
- ☐ If SDCERS is disqualified, these employee contributions would be treated as taxable.

Maintaining Qualified Status Prevents Unexpected Taxation For Many Active And Retired Members

- ☐ If SDCERS is a qualified plan, SDCERS members are taxed on their benefits when they receive them.
- ☐ If SDCERS is disqualified, SDCERS members would be taxed on their benefits when vested.
- ☐ Taxes would be due on benefits years before the benefits are payable to members and beneficiaries.

Maintaining Qualified Status Avoids Immediate Taxation of Benefits— Example of an Active General Member

- ☐ If a vested general member still working today has a current benefit of \$2,000 per month, that member is not taxed under a qualified plan such as SDCERS until he or she actually draws a benefit.
- ☐ Under a disqualified plan, the active member will be taxed in the current year on the present value of \$2,000 per month for the member's anticipated lifetime. If the member is age 50 (and is assumed to retire at 55 with a 50% continuance), the member could be taxed now on the approximate present value - \$250,000.

Maintaining Qualified Status Avoids Immediate Taxation of Benefits— Example of A Retired Member

- ☐ If a retiree is receiving a \$3000 per month life annuity, the retiree is now just being taxed on the monthly payments actually made during the year.
- ☐ Under a disqualified plan, the retiree would be taxed this year on the value of future benefits. If the retiree is 60, the approximate present value is \$430,000.

Maintaining Qualified Status Preserves The Rollover Option For Employees Who Withdraw Contributions

- ☐ If SDCERS is a qualified plan, a SDCERS member who leaves employment and receives a refund of contributions can avoid immediate taxation by rolling that amount over to an IRA or to another retirement plan.
- ☐ If SDCERS is disqualified, that employee is immediately taxed and can't rollover.

Maintaining Qualified Status Preserves The Rollover Option For DROP Members

- ☐ If SDCERS is qualified, members with DROP accounts can elect to roll those over to an IRA or another plan at distribution.
- ☐ If SDCERS is disqualified, those refunds and DROP balances can't be rolled over and are immediately taxable to the individual.

Preserving Qualified Status Protects The Tax Treatment Of Service Purchases

- ☐ If SDCERS is qualified, the benefits attributable to service purchases are taxable when the benefits are paid.
- ☐ If SDCERS is disqualified, the value of those benefits is immediately taxable to members.

How Would SDCERS Have To Proceed If The Technical Ordinance Is Not Adopted?

- ☐ SDCERS would immediately notify the IRS that the Technical Ordinance was not adopted.
- ☐ SDCERS would immediately work with the IRS to determine a timeline to prepare reports and IRS filings to reflect the proper taxation of current employees and retirees.

SDCERS's Position

☐ "This was not a simple process. It's never easy to admit failures publicly. However, the Board has recognized that to regain the trust of our members and the public, we must face our past, recognize our mistakes and pledge to run this organization in accordance with all applicable laws."

— Tom Hebrank

☐ The Council's approval of the Tax Ordinance is an important and necessary step to benefit SDCERS members and the public.

000331

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)54
04/15TO:
City Council2. FROM (ORIGINATING DEPARTMENT):
Office of the Mayor3. DATE:
March 13, 2008

SUBJECT:

Tax Ordinance Amending Retirement Plan consistent with IRS Compliance Statement

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

Jay Goldstone 619-236-5941

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND						9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.						
ORGANIZATION						
OBJECT ACCOUNT						
JOB ORDER						
C.I.P. NUMBER						
AMOUNT						

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Edward Flores</i>	3/18/08	8	COO	<i>[Signature]</i>	3/19/08
2				9	CITY ATTORNEY		
3				10			
4				11			
5							
6							
7							
				DOCKET COORD: _____ COUNCIL LIAISON: _____			
				COUNCIL PRESIDENT <input checked="" type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> REFER TO: _____ COUNCIL DATE: 4/1/08			

11. ADOPTION OF:

☐ RESOLUTION(S)☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Ratify the signature of the Chief Operating Officer approving the tri-party Compliance Statement between the City of San Diego, San Diego City Employee Retirement System (SDCERS) and the Internal Revenue Service, entered into by the City and SDCERS on December 20, 2007 and the Internal Revenue Service on January 10, 2008.
2. Adopt the IRS-approved Technical Tax Ordinance amending the SDCERS Retirement Plan to satisfy the conditions of the Compliance Statement and Determination letter issued by the IRS to SDCERS.

11A. STAFF RECOMMENDATIONS:

Approve the Requested Actions

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):COMMUNITY AREA(S):ENVIRONMENTAL IMPACT:HOUSING IMPACT:OTHER ISSUES:

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: REPORT NO:
ATTENTION: The Council President and City Council
ORIGINATING DEPARTMENT: Mayor's Office
SUBJECT: Tax Ordinance Amending Retirement Plan
COUNCIL DISTRICT(S): n/a
CONTACT/PHONE NUMBER: Jay Goldstone, Chief Operating Officer - 619/236-5941

REQUESTED ACTION:

Ratify the signature of the Chief Operating Officer approving the tri-party Compliance Statement between the City of San Diego, San Diego City Employee Retirement System (SDCERS) and the Internal Revenue Service, entered into by the City and SDCERS on December 20, 2007 and the IRS on January 10, 2008 and adopt the IRS-approved Technical Tax Ordinance amending the SDCERS Retirement Plan to satisfy the conditions of the Compliance Statement and Determination Letter issued by the IRS to SDCERS.

STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY:

On July 12, 2005, the SDCERS Board of Administration ("Board") filed a Form 5300 application with the Internal Revenue Service ("IRS"), seeking a favorable determination letter to confirm its tax-qualified status. On that date, the Board also filed a request for a compliance statement under the Voluntary Correction Program ("VCP") of the IRS' Employee Plans Compliance Resolution System. The VCP is a program that allows a plan to voluntarily disclose to the IRS plan document or operational qualification failures it has discovered in its plan, propose corrections and ultimately receive IRS approval of corrections.

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accounts, and (c) mortality, service and other tables it deems necessary, and that these Rules are incorporated into the SDCERS Plan Document (required by the Determination Letter).

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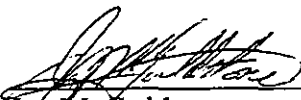
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PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: n/a

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are SDCERS, the City, and the City's employees and retirees. City Council approval of the Technical Tax Ordinance will preserve the favorable tax treatment afforded to the SDCERS Trust Fund, the City and the City's employees, retirees and their beneficiaries.


Jay M. Goldstone
Chief Operating Officer

Attachments:

1. Technical Tax Ordinance
2. Hoffman Letter
3. IRS Determination Letter and Compliance Statement

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1, SECTIONS 24.0103 AND 24.0103.1; BY AMENDING DIVISION 2, SECTIONS 24.0201 AND 24.0202; BY AMENDING DIVISION 3, SECTIONS 24.0301 AND 24.0302; BY AMENDING DIVISION 8, SECTION 24.0801; BY AMENDING DIVISION 9, SECTIONS 24.0901 AND 24.0902; BY AMENDING DIVISION 10, BY RENUMBERING SECTION 24.1000 TO SECTION 24.1001, SECTION 24.1005 TO SECTION 24.1003, BY AMENDING AND RENUMBERING SECTION 24.1010 TO 24.1004, BY RENUMBERING SECTION 24.1011 TO SECTION 24.1005, SECTION 24.1012 TO SECTION 24.1006, SECTION 24.1013 TO SECTION 24.1007, AND SECTION 24.1014 TO SECTION 24.1008, AND BY ADDING SECTION 24.1009; BY REPEALING DIVISION 12, SECTION 24.1203 AND AMENDING SECTION 24.1204; BY REPEALING DIVISION 13, SECTION 24.1310(c), BY REPEALING DIVISION 14, SECTION 24.1402(b)(9), BY REPEALING DIVISION 15, SECTION 24.1502(a)(5); ALL RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

This ordinance makes changes to the City of San Diego's Retirement System to comply with a voluntary correction plan agreement ("VCP Agreement") entered into between the Internal Revenue Service, the City of San Diego, and the San Diego City Employees' Retirement System ("SDCERS"), and upon which is conditioned SDCERS continued status as a tax qualified retirement plan. In particular, it contains amendments in order to conform the plan to relevant provisions of the following federal laws: the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1990

(collectively referred to as “TRA '86”), the Unemployment Compensation Amendments of 1992 (“UCA '92”), the Omnibus Budget Reconciliation Act of 1993 (“OBRA '93”), the Uruguay Round Agreements Act (“GATT”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), the Small Business Job Protection Act of 1996 (“SBJPA”), the Taxpayer Protection Act of 1997 (“TRA '97”), the Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA '98”), and the Community Renewal Tax Relief Act of 2000 (“CRA”) and together with GATT, USERRA, SBJPA, TRA '97, and RRA '98 are referred to as “GUST”), and interim good faith compliance amendments with respect to the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”).

In addition, this ordinance amends the San Diego Municipal Code by adding Section 24.1009 (Presidential Leave Program Prohibited) to provide that the Presidential Leave Program previously agreed to and established by the City in Memoranda of Understanding and by Council Resolution is terminated retroactively to its date of adoption, and the City will not re-establish the program in the future. The ordinance also repeals Section 24.1203 (401(h) Fund Established) retroactive to July 1, 2005 relating to retiree health account, and all provisions that require or allow the use of SDCERS Trust Fund assets to pay retiree health benefits or the costs of administering retiree health benefits; and repeals subdivision (c) of Section 24.1310 (Purchase of Service Credit Payment Options) retroactive to July 1, 2002, to eliminate the ability of employees in the San Diego Firefighters Local 145 bargaining unit to convert to SDCERS service credit the “cash equivalent” of the accumulated annual leave accrued after June 30, 2002.

The ordinance also provides that the SDCERS Board will adopt by Rule: (a) member contribution rates; (b) interest rates credited to member contribution and DROP accounts; and (c) mortality, service and other tables it deems necessary, and that these Rules are incorporated into

the SDCERS Plan Document. The ordinance further provides that, effective July 26, 2004, based upon the advice of the Actuary, the Board will separately determine and adopt the City's employer contributions for General Members, Safety Members and Elected Officers, instead of the contribution being based upon a Memorandum of Understanding between the City and SDCERS. The ordinance also provides that the state-mandated registered domestic partner benefits are provided under SDCERS retroactive to January 1, 2005, in accordance with California law.

This ordinance contains a notice that a full reading of the ordinance is dispensed with prior to its passage because a printed copy will be available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

CMB:als
04/01/2008 REV.
Or.Dept:Mayor
O-2008-133

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1; SECTIONS 24.0103 AND 24.0103.1; BY AMENDING DIVISION 2, SECTIONS 24.0201 AND 24.0202; BY AMENDING DIVISION 3, SECTIONS 24.0301 AND 24.0302; BY AMENDING DIVISION 8, SECTION 24.0801; BY AMENDING DIVISION 9, SECTIONS 24.0901 AND 24.0902; BY AMENDING DIVISION 10, BY RENUMBERING SECTION 24.1000 TO SECTION 24.1001, SECTION 24.1005 TO SECTION 24.1003, BY AMENDING AND RENUMBERING SECTION 24.1010 TO 24.1004, BY RENUMBERING SECTION 24.1011 TO SECTION 24.1005, SECTION 24.1012 TO SECTION 24.1006, SECTION 24.1013 TO SECTION 24.1007, AND SECTION 24.1014 TO SECTION 24.1008, AND BY ADDING SECTION 24.1009; BY REPEALING DIVISION 12, SECTION 24.1203 AND AMENDING SECTION 24.1204; BY REPEALING DIVISION 13, SECTION 24.1310(c), BY REPEALING DIVISION 14, SECTION 24.1402(b)(9), BY REPEALING DIVISION 15, SECTION 24.1502(a)(5); ALL RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, adoption of this Ordinance by April 25, 2008, is a condition of a voluntary correction plan agreement ("VCP Agreement") entered into between the IRS, the City of San Diego and SDCERS, and upon which is conditioned SDCERS continued status as a tax qualified retirement plan; and

WHEREAS, pursuant to Article 16, Section 17 of the California Constitution and Sections 142 to 144 of the Charter for the City of San Diego, the SDCERS Board has the responsibility and authority to retain a qualified actuary and establish funding, contribution and actuarial equivalent factors, and, pursuant to the VCP Agreement, the IRS has required that the SDCERS Board exercise this authority pursuant to formally promulgated written rules that are

available for review by SDCERS members, the City Council, the IRS and other interested parties; and

WHEREAS, a current set of contribution and actuarial factor rules promulgated by SDCERS Board and covering the period from July 1, 1989 to June 30, 2008, is attached as Appendix A to this Ordinance, and said rules, as amended from time to time by the SDCERS Board, will constitute part of the SDCERS written plan document for purposes of the qualification requirements of Internal Revenue Code Section 401(a), and all references to "Board rule(s)" in this Ordinance refer to the SDCERS Board rules referenced in this recital paragraph; and

WHEREAS, the City Council is adopting the amendments contained in this Ordinance in order to conform the plan to relevant provisions of the following federal laws: the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1990 (collectively referred to as "TRA '86"), the Unemployment Compensation Amendments of 1992 ("UCA '92"), the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93"), the Uruguay Round Agreements Act ("GATT"), the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Small Business Job Protection Act of 1996 ("SBJPA"), the Taxpayer Protection Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA '98"), and the Community Renewal Tax Relief Act of 2000 ("CRA" and together with GATT, USERRA, SBJPA, TRA '97, and RRA '98 are referred to as "GUST"), and interim good faith compliance amendments with respect to the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); and

WHEREAS, it is now necessary and appropriate to amend the Municipal Code to provide for the above-recited changes; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 4, Division 1 of the San Diego Municipal Code is amended by amending sections 24.0103 and 24.0103.1, to read as follows:

§ 24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

“Accumulated Additional Contributions” through *“Accumulated Normal Contributions”*

[No change in text.]

“Actuarial Equivalent” means a benefit of equal value when computed upon the basis of the mortality, interest, and other tables adopted by the Board by Rule. These Board Rules, as the same may be amended or adopted by the Board from time to time, are incorporated by reference into this Article as part of the Plan document. This definition is effective July 1, 1989.

“Actuary” through *“Base Compensation”* [No change in text.]

“Base Retirement Benefit” means the monthly retirement benefit for service or disability paid to a Member, or a like amount which is deposited monthly in the account of a DROP Participant, which includes: 1) the Unmodified Service Retirement allowance (which will be modified if the member selects an optional retirement as provided in Division 6); 2) the Cost of Living Annuity; 3) the annual Cost of Living Adjustment (COLA) described in Section 24.1505; and 4) the Surviving Spouse Annuity described in Section 24.0601 if selected by the Member. The Base Retirement Benefit does not include the Annual Supplemental Benefit (13th check) described in Section 24.1503 or the Supplemental COLA adjustment described in Section 24.1504.

“Beneficiary” through *“Retirement System”* [No change in text.]

“*Rule(s)*” means the current set of funding, contribution and actuarial equivalent factor rules promulgated by the Board and covering the period from July 1, 1989 to June 30, 2008, attached as Appendix A to this Article, and said rules, as may be amended or adopted from time to time by the Board, which will constitute part of the SDCERS written plan document for purposes of the qualification requirements of Internal Revenue Code Section 401(a).

“*Safety Member*” through “*Unmodified Service Retirement Allowance*” [No change in text.]

§24.0103.1 Compliance with the California Domestic Partner Rights and Responsibilities Act of 2003

Unless otherwise stated, for purposes of this article: "surviving spouse" includes a registered Domestic Partner pursuant to the California Domestic Partner Rights and Responsibilities Act of 2003. This Section 24.0103.1, as added by O-19568 N.S., is retroactively effective January 1, 2005, to comply with operation pursuant to California law.

Section 2. That Chapter 2, Article 4, Division 2 of the San Diego Municipal Code is amended by amending sections 24.0201 and 24.0202, to read as follows:

§24.0201 Normal Rate of Contribution

For General Members, the Board shall provide:

(a) [No change in text.]

- (b) Effective November 18, 2002, a Member who is serving as the duly elected president of a recognized employee labor organization will continue to participate in the Retirement System. While serving as president:
- (1) the Member will remain a full-time City employee receiving a salary from the City;
 - (2) the Member will continue to make contributions, as set forth in this Division, based upon his or her City salary;
 - (3) the Member's Base Compensation will be based solely upon the salary paid to the Member by the City, and will not include any amounts paid by the labor organization.

§24.0202 Adoption of General Member Contributions Rates

The Board, based upon the advice of the Actuary, will periodically adopt by Rule the rate of contribution of each General Member according to the age at the time of entry into the Retirement System in compliance with federal law. These rates will be contained in the operating Tables furnished to the Board by the System's Actuary. The Rules adopted by the Board under this section are incorporated by reference into this Article and are effective beginning July 1, 1989, in accordance with their terms.

Section 3. That Chapter 2, Article 4, Division 3 of the San Diego Municipal Code is amended by amending sections 24.0301 and 24.0302, to read as follows:

§24.0301 Normal Rate of Contribution

For Safety Members, the Board shall provide:

- (a) [No change in text.]

- (b) Effective November 18, 2002, a Member who is serving as the duly elected president of a recognized employee labor organization will continue to participate in the Retirement System. While serving as president:
- (1) the Member will remain a full-time City employee receiving a salary from the City;
 - (2) the Member will continue to make contributions, as set forth in this Division, based upon his or her City salary;
 - (3) the Member's Base Compensation will be based solely upon the salary paid to the Member by the City, and will not include any amounts paid by the labor organization.

§24.0302 Adoption of Safety Member Contribution Rates

The Board, based upon the advice of the Actuary, will periodically adopt by Rule the rate of contribution of each Safety Member according to the age at the time of entry into the Retirement System in compliance with federal law. These rates will be contained in the operating Tables furnished to the Board by the System's Actuary. The Rules adopted by the Board under this section are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, in accordance with their terms.

Section 4. That Chapter 2, Article 4, Division 8 of the San Diego Municipal Code is amended by amending section 24.0801, to read as follows:

§24.0801 City's Contribution

Effective July 26, 2004, based upon the advice of the Actuary, the Board separately determines and adopts, the City's employer contributions for General Members, Safety

Members and Elected Officers. All deficiencies that occur due to the adoption of any Retirement Ordinances must be amortized over a period of thirty years or less.

Section 5. That Chapter 2, Article 4, Division 9 of the San Diego Municipal Code is amended by amending sections 24.0901 and 24.0902, to read as follows:

**§24.0901 Rules, Actuarial Valuations, Determined Interest Assumption Rate, Employ
 Actuary, Investment Counsel**

The Board may make Rules it deems proper to administer the Retirement System consistent with its fiduciary duties under Article 16, Section 17 of the California Constitution. The Board will identify the Rules that are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, and as may be amended or adopted from time to time by the Board, in accordance with their terms. Subject to this ordinance, and the Board's Rules, the Board may modify benefits for service and disability, determine who are Members, and is the sole judge of the conditions under which persons may receive benefit from the system. The Board may also secure and pay reasonable compensation for the medical services and advice it deems necessary to discharge its duties.

The Board may employ an actuary as needed. Each year, on a fiscal year established for this purpose, the Board will employ an Actuary to make a valuation of the System's assets and liabilities. At least once every five years, the Board will employ an Actuary to conduct a thorough investigation of the mortality, service and compensation experience of Members and other persons receiving benefits, along with an actuarial valuation of the System's assets and liabilities. From time to time, the Board will also determine by Rule the assumed rate of interest earnings for the Retirement Fund. The Rule adopted for this

purpose will be used to determine interest rates for Member contribution accounts and is incorporated into this Article as part of the Plan document. The Board may also employ independent investment counselors as needed to provide professional services to support the Board's investment responsibilities.

§24.0902 Adoption of Mortality, Service, Interest Rates and Other Tables

Based upon its investigations, valuations, and determinations of the Actuary, the Board will adopt by Rule the mortality, service and other tables and interest rates it deems proper, and will revise by Rule the Members' contribution rates as it deems necessary, to provide the benefits of the Plan. The Board's decisions on matters covered by this section are conclusive, if arrived at in good faith, and the Rules adopted under this section are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, in accordance with their terms.

Section 6. That Chapter 2, Article 4, Division 10 of the San Diego Municipal Code is amended by renumbering section 24.1000 to section 24.1001, section 24.1005 to section 24.1003, by amending and renumbering section 24.1010 to 24.1004, by renumbering section 24.1011 to section 24.1005, section 24.1012 to section 24.1006, section 24.1013 to section 24.1007, and section 24.1014 to section 24.1008, and by adding section 24.1009, to read as follows:

§24.1001 Retired Persons

[No change in text.]

§24.1003 Continuity of Service

[No change in text.]

§24.1004 Compliance with Certain Internal Revenue Code Provisions

- (a) Effective July 1, 1989, the System will satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable. In order to meet those requirements, the System is subject to the following provisions, notwithstanding any other provision of retirement system law. The Board may adopt Rules to implement this section, which are incorporated into this Article as part of the Plan document, including Rules to comply with the Pension Protection Act of 2006.
- (b) Internal Revenue Code Section 401(a)(1), (2): Effective July 1, 1989, the assets of the System, including the assets of retirement accounts, are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the Members and their Beneficiaries and for paying the System's reasonable administrative expenses.
- (c) Internal Revenue Code Section 401(a)(8): Effective July 1, 1989, the System will use forfeitures that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any Member.
- (d) Internal Revenue Code Section 401(a)(9): Effective July 1, 1989, the System will pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the Proposed Income Tax Regulations in effect under that section, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Proposed Income Tax Regulations. Notwithstanding any other provision of this Article, effective on and after January 1, 2003, the System is subject to the following provisions:

- (1) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the Member terminates employment. If a Member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Board will begin distributing the benefit as required by this Article.
- (2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated Beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.
- (3) The life expectancy of a Member, the Member's spouse, the Member's Beneficiary or, on and after January 1, 2005, the Member's Domestic Partner, may not be recalculated after the initial determination for purposes of determining benefits.
- (4) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.

- (5) If a Member dies before required distribution of the Member's benefits has begun, the Member's entire interest must be either
 - (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Member's death, or
 - (B) distributed within five years of the Member's death.
 - (6) The amount of an annuity paid to a Member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code.
 - (7) The death and disability benefits provided by the System are limited by the incidental benefit rule set forth in Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, any death or disability benefit payable may not exceed 25% of the cost for all of the Members' benefits received from SDCERS.
- (e) Internal Revenue Code Section 401(a)(17):
- (1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the System takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.
 - (2) The annual compensation of each Member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 1996, and prior to July 1, 2002, may not exceed \$150,000, as

adjusted for cost of living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the Member and any lineal descendant of the Member who has not attained age nineteen before the close of the year. If the annual compensation of a Member and his family members is so limited, the annual compensation of the Member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6), divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described above.

- (3) The annual compensation of each Member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 2002, may not exceed \$200,000, as adjusted for cost of living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).
- (4) For purposes of paragraphs (e)(1) through (e)(3), annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the System (the determination period). The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination

period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

- (5) The limits referenced in paragraph (e)(1) through (e)(4) above apply only to plan years beginning on or after July 1, 1996, and only to individuals who first become Members in plan years beginning on and after July 1, 1996. Individuals who become Members before plan years beginning on and after July 1, 1996, are not subject to the limits of Internal Revenue Code Section 401(a)(17). Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such Member in any year.
- (f) Internal Revenue Code Section 401(a)(25): Effective July 1, 1989, SDCERS will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by Rule; such benefits will not be subject to employer discretion. The Board Rules adopted for this purpose are incorporated into the Article as part of the Plan document.

(g) Internal Revenue Code Section 401(a)(31):

(1) This subsection applies to distributions made on or after January 1, 1993.

Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement

account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

- (B) Eligible retirement plan: An eligible retirement plan is:
- (i) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the System,
 - (ii) an individual retirement account described in Internal Revenue Code Section 408(a),
 - (iii) an individual retirement annuity described in Internal Revenue Code Section 408(b),
 - (iv) an annuity plan described in Internal Revenue Code Section 403(a),

- (v) *effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b),*
 - (vi) *a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or*
 - (vii) *effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.*
- (C) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).
- (D) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the

account or annuity will be treated as an "inherited" individual retirement account or annuity.

(E) Direct rollover: A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee.

- (2) Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 24.0206 or Section 24.0306, if a Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly in accordance with Section 24.0206 or Section 24.0306, then the Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Board.

(h) Internal Revenue Code Section 415:

- (1) Effective July 1, 1989, Member contributions paid to, and retirement benefits paid from, the System may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude Member contributions picked up under Internal Revenue Code Section 414(h)(2), and for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Member and which is

not includible in the gross income of the Member by reason of Internal Revenue Code Section 125 or 457, and for plan years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4).

- (2) Before July 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after July 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).
- (3) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:
 - (A) before July 1, 2007, adjustments under Sections 24.1503, 24.1504, 24.1505, and 24.1506 will be taken into consideration when determining a Member's applicable Limit;
 - (B) on and after July 1, 2007, with respect to a Member who does not receive a portion of the Member's annual benefit in a lump sum:
 - (i) a Member's applicable Limit will be applied to the Member's annual benefit in the first limitation year without regard to any automatic cost of living increases under Section 24.1501;
 - (ii) to the extent the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases under Section 24.1505 until such time as

- the benefit plus the accumulated increases under Section 24.1505 are less than the Limit; and
- (iii) thereafter, in any subsequent limitation year, the Member's annual benefit including any automatic cost of living increase applicable under Section 24.1505 shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and
- (C) On and after July 1, 2007, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit shall be applied taking into consideration automatic cost of living increases under Section 24.1501 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and
- (D) On and after July 1, 2007, in no event will a Member's annual benefit payable under the System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity

starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

- (i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):
 - (a) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or
 - (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table described in Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent

Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):
 - (a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - (b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent

Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

- (c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality table for the distribution under Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.
- (4) Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

- (A) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Internal Revenue Code Sections 415(c) or 415(n).
- (B) If payment pursuant to subsection (h)(4)(A) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.
- (C) Effective for permissive service credit contributions made in years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, then the requirements of this section will be treated as met only if:
 - (i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or
 - (ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c). For purposes of applying subparagraph (i) the System will not fail to meet the reduced limit under

Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (4), and for purposes of applying subparagraph (ii) the System will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).

- (D) For purposes of this paragraph (4) the term "permissive service credit" means service credit:
- (i) recognized by the System for purposes of calculating a Member's benefit under the System,
 - (ii) which such Member has not received under the System, and
 - (iii) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in years beginning after December 31, 1997, permissive service credit may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit that a Member is receiving under the System.

- (E) The System will fail to meet the requirements of this paragraph (4) if:
 - (i) more than five years of nonqualified service credit are taken into account for purposes of this paragraph (4), or
 - (ii) any nonqualified service credit is taken into account under this paragraph (4) before the Member has at least five years of participation under the System.

- (F) For purposes of subparagraph (E), effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),
 - (ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a

public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

- (iii) service as an employee of an association of employees who are described in clause (i), or
- (iv) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

- (G) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

- (i) the limitations of subparagraph (E) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

- (ii) the distribution rules applicable under federal law to the System will apply to such amounts and any benefits attributable to such amounts.
- (H) For an eligible Member, the limitation of Internal Revenue Code Section 415(c)(1) will not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the SDCERS as in effect on August 5, 1997. For purposes of this subparagraph (H), an eligible Member is an individual who first became a Member in SDCERS before July 1, 1998.
- (5) Effective January 1, 2009, the limitation year for purposes of Internal Revenue Code Section 415 is the calendar year beginning each January 1 and ending each December 31, with a short limitation year beginning July 1, 2008, and ending December 31, 2008. This is a change in the limitation year made pursuant to Treasury Regulation Section 1.415-2(b)(2) or successor regulation. The implementation of the change in the limitation year will be accomplished as required by Treasury Regulation Section 1.415-2(b)(4) or successor regulation.
- (7) Nothing contained in this section will limit the City Council from modifying benefits to the extent such modifications are permissible by the City Charter and applicable state and federal law.

- (i) Internal Revenue Code Section 503(b): Effective July 1, 1989, the Board may not engage in any transaction prohibited by Section 503(b) of the Internal Revenue Code.
- (j) Internal Revenue Code Section 414(u): Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.
- (k) Internal Revenue Code Section 411(e): Effective July 1, 1989, in addition to any protection provided by this ordinance and California law:
 - (1) A Member will be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit; and
 - (2) A Member will be 100% vested in all Plan benefits if the Plan is terminated or experiences a complete discontinuance of contributions.

§24.1005 Reciprocal Benefits with the Public Employees' Retirement System

[No change in text.]

§24.1006 Retirement Allowance of Fixed Pension Retirees

[No change in text.]

§24.1007 Early Retirement Incentive Program

[No change in text.]

§24.1008 Exemption from Process; Assignments Prohibited

[No change in text.]

§24.1009 Presidential Leave Program Prohibited

The Presidential Leave Program previously agreed to and established by the City in Memoranda of Understanding and by Council Resolution is hereby terminated retroactively to its date of adoption, and the City will not re-establish the program in the future. No Member will be allowed to accrue Creditable Service, make contributions or include compensation as a result of employment with a labor organization.

Section 7. That Chapter 2, Article 4, Division 12 of the San Diego Municipal Code is amended by repealing section 24.1203 effective July 1, 2005, and by amending section 24.1204 effective July 1, 2005, to read as follows:

§24.1204 Funding of Retiree Health Benefits

The retiree health benefits described in this Division will be paid by the City, directly, from any source available to it other than the Plan.

Section 8. That Chapter 2, Article 4, Division 13 of the San Diego Municipal Code is amended by repealing section 24.1310(c) effective July 1, 2002.

Section 9. That Chapter 2, Article 4, Division 14 of the San Diego Municipal Code is amended by repealing section 24.1402(b)(9) effective July 1, 2002.

Section 10. That Chapter 2, Article 4, Division 15 of the San Diego Municipal Code is amended by repealing section 24.1502(a)(5) effective July 1, 2005.

Section 11. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 12. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Catherine M. Bradley
Catherine M. Bradley
Chief Deputy City Attorney

CMB:als
03/28/08
04/01/08 REV.
Or.Dept:Mayor
O-2008-133

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE**OLD LANGUAGE: ~~Struck-Out~~****NEW LANGUAGE: Redline**

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1, SECTIONS 24.0103 AND 24.0103.1; BY AMENDING DIVISION 2, SECTIONS 24.0201 AND 24.0202; BY AMENDING DIVISION 3, SECTIONS 24.0301 AND 24.0302; BY AMENDING DIVISION 8, SECTION 24.0801; BY AMENDING DIVISION 9, SECTIONS 24.0901 AND 24.0902; BY AMENDING DIVISION 10, BY RENUMBERING SECTION 24.1000 TO SECTION 24.1001, SECTION 24.1005 TO SECTION 24.1003, BY AMENDING AND RENUMBERING SECTION 24.1010 TO 24.1004, BY RENUMBERING SECTION 24.1011 TO SECTION 24.1005, SECTION 24.1012 TO SECTION 24.1006, SECTION 24.1013 TO SECTION 24.1007, AND SECTION 24.1014 TO SECTION 24.1008, AND BY ADDING SECTION 24.1009; BY REPEALING DIVISION 12, SECTION 24.1203 AND AMENDING SECTION 24.1204; BY REPEALING DIVISION 13, SECTION 24.1310(c), BY REPEALING DIVISION 14, SECTION 24.1402(b)(9), BY REPEALING DIVISION 15, SECTION 24.1502(a)(5); ALL RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

§ 24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

"Accumulated Additional Contributions" through *"Accumulated Normal Contributions"*

[No change in text.]

"Actuarial Equivalent" means a benefit of equal value when computed upon the basis of the mortality, interest, and other tables adopted by the Board ~~for this purpose~~ by Rule.

These Board Rules, as the same may be amended or adopted by the Board from time to

time, are incorporated by reference into this Article as part of the Plan document. This definition is effective July 1, 1989.

“Actuary” through *“Base Compensation”* [No change in text.]

“Base Retirement Benefit” means the monthly retirement benefit for service or disability paid to a Member, or a like amount which is deposited monthly in the account of a DROP Participant, which includes: 1) the Unmodified Service Retirement allowance (which will be modified if the member selects an optional retirement as provided in Division 6); 2) the Cost of Living Annuity; 3) the annual Cost of Living Adjustment (COLA) described in Section 24.1505; and 4) the Surviving Spouse Annuity described in Section 24.0521 ~~24.0601~~ if selected by the Member. The Base Retirement Benefit does not include the Annual Supplemental Benefit (13th check) described in Section 24.1503 or the Supplemental COLA adjustment described in Section 24.1504.

“Beneficiary” through *“Retirement System”* [No change in text.]

“Rule(s)” means the current set of funding, contribution and actuarial equivalent factor rules promulgated by the Board and covering the period from July 1, 1989 to June 30, 2008, attached as Appendix A to this Article, and said rules, as may be amended or adopted from time to time by the Board, which will constitute part of the SDCERS written plan document for purposes of the qualification requirements of Internal Revenue Code Section 401(a).

“Safety Member” through *“Unmodified Service Retirement Allowance”* [No change in text.]

§24.0103.1 Compliance with the California Domestic Partner Rights and Responsibilities Act of 2003

Unless otherwise stated, for purposes of this article: "surviving spouse" includes a registered Domestic Partner pursuant to the California Domestic Partner Rights and Responsibilities Act of 2003. This Section 24.0103.1, as added by O-19568 N.S., is retroactively effective January 1, 2005, to comply with operation pursuant to California law.

§24.0201 Normal Rate of Contribution

For General Members, the Board shall provide:

- (a) [No change in text.]
- (b) Effective November 18, 2002, a A Member who is serving as the duly elected president of a recognized employee labor organization ~~may~~ will continue to participate in the Retirement System. ~~consistent with the governing Memorandum of Understanding between the City and the Member's employee organization.~~
While serving as president:
 - (1) the Member will remain a full-time City employee receiving a salary from the City;
 - (2) the Member will continue to make contributions, as set forth in this Division, based upon his or her City salary;
 - (3) the Member's Base Compensation will be based solely upon the salary paid to the Member by the City, and will not include any amounts paid by the labor organization.

§24.0202 Adoption of General Member Contributions Rates

The Board, based upon the advice of the Actuary, ~~shall~~ will periodically adopt by Rule the rate of contribution of each General Member according to the age at the time of entry into the Retirement System in compliance with federal law, said rates to. These rates will be contained in the operating Tables furnished to the Board by the System's Actuary. The Rules adopted by the Board under this section are incorporated by reference into this Article and are effective beginning July 1, 1989, in accordance with their terms.

§24.0301 Normal Rate of Contribution

For Safety Members, the Board shall provide:

- (a) [No change in text.]
- (b) Effective November 18, 2002, a A Member who is serving as the duly elected president of a recognized employee labor organization ~~may~~ will continue to participate in the Retirement System. ~~consistent with the governing Memorandum of Understanding between the City and the Member's employee organization.~~
While serving as president:
 - (1) the Member will remain a full-time City employee receiving a salary from the City;
 - (2) the Member will continue to make contributions, as set forth in this Division, based upon his or her City salary;
 - (3) the Member's Base Compensation will be based solely upon the salary paid to the Member by the City, and will not include any amounts paid by the labor organization.

§24.0302 Adoption of Safety Member Contribution Rates

The Board, based upon the advice of the Actuary, ~~shall~~ will periodically adopt by Rule the rate of contribution of each Safety Member according to the age at the time of entry into the Retirement System in compliance with federal law, ~~said rates to~~. These rates will be contained in the operating Tables furnished to the Board by the System's Actuary. The Rules adopted by the Board under this section are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, in accordance with their terms.

§24.0801 City's Contribution

~~The City will contribute to the Retirement Fund, on behalf of Members employed by the City, the amounts agreed to in the governing Memorandum of Understanding between the City and the Board. Effective July 26, 2004, based upon the advice of the Actuary, the Board separately determines and adopts, The San Diego City Employees' Retirement Actuary separately determines of the Board of the San Diego City Employees' Retirement System, the City's employer contributions for General Members, Safety Members and Elected Officers. All deficiencies that occur due to the adoption of any Retirement Ordinances must be amortized over a period of thirty years or less. The portion of the contribution that the City designates for the 401(h) Fund or the Health Trust, to be used for retiree health benefits under Division 12, is not a deficiency within the meaning of this section.~~

**§24.0901 Rules, Actuarial Valuations, Determined Interest Assumption Rate, Employ
Actuary, Investment Counsel**

The Board may make Rules it deems proper to administer the Retirement System consistent with its fiduciary duties under Article 16, Section 17 of the California Constitution. The Board will identify the Rules that are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, and as may be amended or adopted from time to time by the Board, in accordance with their terms. Subject to this ordinance, and the Board's Rules, the Board may modify benefits for service and disability, determine who are Members, and is the sole judge of the conditions under which persons may receive benefit from the system. The Board may also secure and pay reasonable compensation for the medical services and advice it deems necessary to discharge its duties.

The Board may employ an actuary as needed. Each year, on a fiscal year established for this purpose, the Board will employ an Actuary to make a valuation of the System's assets and liabilities. At least once every five years, the Board will employ an Actuary to conduct a thorough investigation of the mortality, service and compensation experience of Members and other persons receiving benefits, along with an actuarial valuation of the System's assets and liabilities. From time to time, the Board will also determine by Rule the assumed rate of interest earnings for the Retirement Fund. The Rule adopted for this purpose will be used to determine interest rates for Member contribution accounts and is incorporated into this Article as part of the Plan document. The Board may also employ independent investment counselors as needed to provide professional services to support the Board's investment responsibilities.

§24.0902 Adoption of Mortality, Service, Interest Rates and Other Tables

Based upon its investigations, valuations, and determinations of the Actuary, the Board will adopt by Rule the mortality, service and other tables and interest rates it deems proper, and will revise by Rule the Members' contribution rates as it deems necessary, to provide the benefits of the Plan. The Board's decisions on matters covered by this section are conclusive, if arrived at in good faith, and the Rules adopted under this section are incorporated into this Article as part of the Plan document and are effective beginning July 1, 1989, in accordance with their terms.

§24.10001 Retired Persons

[No change in text.]

§24.10053 Continuity of Service

[No change in text.]

§24.100104 Compliance with Certain Internal Revenue Code Provisions

- (a) Effective July 1, 1989, the System will satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable. In order to meet those requirements, the System is subject to the following provisions, notwithstanding any other provision of retirement system law. The Board may adopt Rules to implement this section, which are incorporated into this Article as part of the Plan document, including Rules to comply with the Pension Protection Act of 2006.
- (b) Internal Revenue Code Section 401(a)(1), (2): Effective July 1, 1989, the assets of the System, including the assets of retirement accounts, are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit

of the Members and their Beneficiaries and for paying the System's reasonable administrative expenses.

(c) Internal Revenue Code Section 401(a)(8): Effective July 1, 1989, the System will use forfeitures that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any Member.

(d) Internal Revenue Code Section 401(a)(9): Effective July 1, 1989, the System will pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the Proposed Income Tax Regulations in effect under that section, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Proposed Income Tax Regulations. Notwithstanding any other provision of this Article, effective on and after January 1, 2003, the System is subject to the following provisions:

(1) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the Member terminates employment. If a Member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Board will begin distributing the benefit as required by this Article.

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated Beneficiary, or over a period not

extending beyond the life expectancy of the Member or of the Member and a designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.

- (3) The life expectancy of a Member, the Member's spouse, the Member's Beneficiary or, on and after January 1, 2005, the Member's Domestic Partner, may not be recalculated after the initial determination for purposes of determining benefits.
- (4) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.
- (5) If a Member dies before required distribution of the Member's benefits has begun, the Member's entire interest must be either

 - (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Member's death, or
 - (B) distributed within five years of the Member's death.
- (6) The amount of an annuity paid to a Member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code.
- (7) The death and disability benefits provided by the System are limited by the incidental benefit rule set forth in Treasury Regulation Section 1.401-

1(b)(1)(i) or any successor regulation thereto. As a result, any death or disability benefit payable may not exceed 25% of the cost for all of the Members' benefits received from SDCERS.

(e)(a) Internal Revenue Code Section 401(a)(17):

- (1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section herein, the annual compensation the System takes taken into account under the Retirement System for any purpose, including but not limited to contributions and/or benefits, shall may not exceed \$150,000 or such larger the amount allowed by Internal Revenue Code sSection 401(a)(17) as of the first day of the plan year.
- (2) The \$150,000 limit annual compensation of each Member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 1996, and prior to July 1, 2002, may not exceed \$150,000, as adjusted for cost of living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). In 1996, the family aggregation rules of Internal Revenue Code Section 401(a)(17)(A) were applicable in determining the compensation limit in effect for the determination period. Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the Member and any lineal descendant of the Member who has not attained age nineteen before the close of the year. If the annual compensation of a Member and his family members is so

limited, the annual compensation of the Member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described above.

(3) The annual compensation of each Member taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 2002, may not exceed \$200,000, as adjusted for cost of living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(4) For purposes of paragraphs (e)(1) through (e)(3), annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the System (the determination period). The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Member's contributions or benefits for the current plan

year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(5)(3) The limits referenced in paragraph (e)(1) through (e)(4) above apply only to plan years beginning on or after July 1, 1996, and only to individuals who first become Members in plan years beginning on and after July 1, 1996. Individuals who become mMembers of the Retirement system before plan years beginning on and after January July 1, 1996, shall not be are not subject to the limits of Internal Revenue Code sSection 401(a)(17). Instead, pPursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued thereunder under that section, the annual compensation in effect under Internal Revenue Code sSection 401(a)(17) shall does not apply to any such mMember in any year.

(f) Internal Revenue Code Section 401(a)(25): Effective July 1, 1989, SDCERS will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by Rule; such benefits will not be subject to employer discretion. The Board Rules adopted for this purpose are incorporated into the Article as part of the Plan document.

(g) Internal Revenue Code Section 401(a)(31):

(1) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to

separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(B) Eligible retirement plan: An eligible retirement plan is:

- (i) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the System,
- (ii) an individual retirement account described in Internal Revenue Code Section 408(a),
- (iii) an individual retirement annuity described in Internal Revenue Code Section 408(b),
- (iv) an annuity plan described in Internal Revenue Code Section 403(a),
- (v) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b),
- (vi) a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or
- (vii) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

- (C) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).
- (D) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- (E) Direct rollover: A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee.
- (2) Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 24.0206 or Section 24.0306, if a Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct

rollover or to receive the distribution directly in accordance with Section 24.0206 or Section 24.0306, then the Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Board.

(h)(b) Internal Revenue Code Section 415:

- (1) Notwithstanding any other provisions of Article IX of the San Diego City Charter or of this article, the benefits payable to any person who becomes a plan member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code. Effective July 1, 1989, Member contributions paid to, and retirement benefits paid from, the System may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude Member contributions picked up under Internal Revenue Code Section 414(h)(2), and for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Internal Revenue Code Section 125 or 457, and for plan years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4).

- (2) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made. Before July 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after July 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).
- (3) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:
- (A) before July 1, 2007, adjustments under Sections 24.1503, 24.1504, 24.1505, and 24.1506 will be taken into consideration when determining a Member's applicable Limit;
- (B) on and after July 1, 2007, with respect to a Member who does not receive a portion of the Member's annual benefit in a lump sum:
- (i) a Member's applicable Limit will be applied to the Member's annual benefit in the first limitation year without regard to any automatic cost of living increases under Section 24.1501;
- (ii) to the extent the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases under Section 24.1505 until such time as the benefit plus the accumulated increases under Section 24.1505 are less than the Limit; and

(iii) thereafter, in any subsequent limitation year, the Member's annual benefit including any automatic cost of living increase applicable under Section 24.1505 shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and

(C) On and after July 1, 2007, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit shall be applied taking into consideration automatic cost of living increases under Section 24.1501 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

(D) On and after July 1, 2007, in no event will a Member's annual benefit payable under the System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the

following assumptions that takes into account the death benefits under the form of benefit:

(i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

(a) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or

(b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table described in Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):
- (a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
- (b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality table for the distribution under Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(4)(3) The benefits payable to any person who became a plan member prior to January 1, 1990, shall be subject to the greater of the following:
Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

- (A) ~~The limitations set forth in Section 415 of the~~ If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Internal Revenue Code; Sections 415(c) or 415(n).
- (B) ~~The accrued benefit of the member (determined without regard to any amendment made after October 14, 1987), as provided in Section 415(b)(10)(A) of the Internal Revenue Code. If payment pursuant to subsection (h)(4)(A) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.~~
- (C) Effective for permissive service credit contributions made in years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, then the requirements of this section will be treated as met only if:
- (i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c). For purposes of applying subparagraph (i) the System will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (4), and for purposes of applying subparagraph (ii) the System will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).

(D) For purposes of this paragraph (4) the term "permissive service credit" means service credit:

(i) recognized by the System for purposes of calculating a Member's benefit under the System,

(ii) which such Member has not received under the System, and

(iii) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in years beginning after December 31, 1997, permissive service credit may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit that a Member is receiving under the System.

(E) The System will fail to meet the requirements of this paragraph (4) if:

- (i) more than five years of nonqualified service credit are taken into account for purposes of this paragraph (4), or
- (ii) any nonqualified service credit is taken into account under this paragraph (4) before the Member has at least five years of participation under the System.

(F) For purposes of subparagraph (E), effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

- (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was

obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

(G) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or

457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(i) the limitations of subparagraph (E) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under federal law to the System will apply to such amounts and any benefits attributable to such amounts.

(H) For an eligible Member, the limitation of Internal Revenue Code Section 415(c)(1) will not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the SDCERS as in effect on August 5, 1997. For purposes of this subparagraph (H), an eligible Member is an individual who first became a Member in SDCERS before July 1, 1998.

(4) ~~If compliance with the provisions of Internal Revenue Code section 415 and related sections would result in a lower level of retirement benefits for members on or after January 1, 1990 than for members prior to that date, then the Council shall provide, by ordinance, an alternative means of maintaining for such members the level of benefits in effect for members as December 31, 1989.~~

- ~~(5)~~ If any of the limitations of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.
- ~~(5)(6)~~ All references to Section 415 of the Internal Revenue Code are to the language in Section 415 in effect when this Municipal Code is adopted including any amendments thereafter. For purposes of Section 415 testing, the limitation year shall be based on a fiscal year beginning on July 1 and ending on June 30. Effective January 1, 2009, the limitation year for purposes of Internal Revenue Code Section 415 is the calendar year beginning each January 1 and ending each December 31, with a short limitation year beginning July 1, 2008, and ending December 31, 2008. This is a change in the limitation year made pursuant to Treasury Regulation Section 1.415-2(b)(2) or successor regulation. The implementation of the change in the limitation year will be accomplished as required by Treasury Regulation Section 1.415-2(b)(4) or successor regulation.
- ~~(6)(7)~~ Nothing contained in this section will limit the City Council from modifying benefits to the extent such modifications are permissible by the City Charter and applicable state and federal law.
- ~~(i)~~ Internal Revenue Code Section 503(b): Effective July 1, 1989, the Board may not engage in any transaction prohibited by Section 503(b) of the Internal Revenue Code.
- ~~(i)~~ Internal Revenue Code Section 414(u): Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions,

benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(k) Internal Revenue Code Section 411(e): Effective July 1, 1989, in addition to any protection provided by this ordinance and California law:

(1) A Member will be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit; and

(2) A Member will be 100% vested in all Plan benefits if the Plan is terminated or experiences a complete discontinuance of contributions.

§24.101105 Reciprocal Benefits with the Public Employees' Retirement System

[No change in text.]

§24.101206 Retirement Allowance of Fixed Pension Retirees

[No change in text.]

§24.101307 Early Retirement Incentive Program

[No change in text.]

§24.101408 Exemption from Process; Assignments Prohibited

[No change in text.]

§24.1009 Presidential Leave Program Prohibited

The Presidential Leave Program previously agreed to and established by the City in Memoranda of Understanding and by Council Resolution is hereby terminated retroactively to its date of adoption, and the City will not re-establish the program in the

future. No Member will be allowed to accrue Creditable Service, make contributions or include compensation as a result of employment with a labor organization.

~~§24.1203 — 401(h) Fund Established~~

~~(a) All retiree health benefit payments by the 401(h) Fund will comply with all applicable federal laws, including section 401(h) of the Internal Revenue Code ("Code"). If there is a conflict between this Division and section 401(h) of the Code or regulations issued under that section, the Code and regulations govern.~~

~~(b) 401(h) Fund — Compliance with Applicable Provisions of the Code~~

~~(1) All health benefits under this Division will be paid solely from the 401(h) Fund until the 401(h) Fund assets are exhausted.~~

~~(2) No health benefits provided under the 401(h) Fund may discriminate in favor of highly compensated employees.~~

~~(3) The 401(h) Fund is a separate account solely for providing retiree health benefits. It is established and maintained by the Board to reflect the amounts the City contributes to pay retiree health benefits. The 401(h) Fund exists for record-keeping purposes only. Amounts credited to the 401(h) Fund may be invested with other Retirement System funds set aside for retirement purposes, without identifying which investments are allocated to each account. But, earnings on each account must be allocated in a reasonable manner.~~

~~(4) The City contributes to the 401(h) Fund solely to pay health insurance premiums under this Division. Contributions will be reasonable, ascertainable, necessary and appropriate. Contributions will not exceed the amounts that would~~

violate the Code requirement that health benefits be subordinate to the retirement benefits.

~~(5) When the City makes a contribution to the 401(h) Fund, it must designate in writing to the Board the portion of the contribution to be allocated to the 401(h) Fund for health benefits.~~

~~(6) No part of the 401(h) Fund may be used for any purpose other than paying health benefits under this Division. But, 401(h) Fund assets may be used to pay for necessary and appropriate administrative expenses related to retiree health benefits.~~

~~(7) Any amounts contributed to the 401(h) Fund that remain in the 401(h) Fund after all liabilities for retiree health benefits are satisfied, including benefits payable to existing Members in the future, will be returned to the City. The City will provide benefits to Health Eligible and Non Health Eligible Retirees equal to the returned amount.~~

~~(8) Section 24.1203 does not require separate accounts for key employees because no member of the Retirement System is a key employee under the Code.~~

~~(9) Assets attributable to any forfeitures of benefits payable by the 401(h) Fund will be used to reduce the City's contributions for retiree health benefits.~~

~~(c) The Board may adopt rules and regulations as necessary or appropriate to carry out the requirements of this Division.~~

§24.1204 Funding of Retiree Health Benefits

The retiree health benefits described in this Division will be paid by from the following sources of funds in descending order of availability:

~~(a) — the 401(h) Fund, until exhausted, and~~

(b) the City, directly, from any source available to it other than the Plan.

§24.1310 Purchase of Service Credit Payment Options

(a) through (b) [No change in text.]

~~(c) — Notwithstanding section 24.1310(a), effective July 1, 2002, represented Members in the San Diego Firefighters Local 145 bargaining unit who have not yet entered DROP may convert the cash equivalent of their Unused Annual Leave accrued after July 1, 2002, to Creditable Service in the Retirement System on a pre-tax basis. The amount of Creditable Service to be credited in the Retirement System will be the amount the Board determines to be the employer and employee cost of that Creditable Service. Represented Members in the Local 145 bargaining unit are not eligible to exercise any cash-out feature of Annual Leave that they accrue after July 1, 2002, including Annual Leave accrued after July 1, 2002, while in DROP.~~

§24.1402 Eligibility, Duration of DROP Participation, and Waiver

(a) [No change in text.]

(b)(1) through (b)(8) [No change in text.]

~~(9) — waive his or her right to assert a claim or bring an action against the City, the Port District or the Retirement System based upon age discrimination or any other employment discrimination law arising out of the Member's participation in DROP or the requirement that he or she leave employment at the end of his or her DROP period.~~

§24.1502 Surplus Undistributed Earnings

(a)(1) through (a)(4) [No change in text.]

~~(5) An amount, (the Division 12 amount), appropriate to provide health benefits to Health Eligible and Non Health-Eligible Retirees as provided in Division 12 for the next fiscal year provided:~~

~~(A) in the next fiscal year, the City contributes to the 401(h) Fund no less than an equal amount which is designated to be used for retiree health benefits to be paid or reimbursed in the next fiscal year; and,~~

~~(B) to the extent the City makes a contribution to the 401(h) Fund for the next fiscal year, the Division 12 amount shall be treated as a portion of normal employer contributions paid to the Retirement System when the City so designates in accordance with Section 24.1203(b)(5); and~~

(a)(6) through (a)(8) [No change in text.]

(b) [No change in text.]

CMB:als
03/28/08
04/01/08 REV.
Or.Dept:Mayor
O-2008-133

000419

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO RATIFYING THE SIGNATURE OF THE CHIEF
OPERATING OFFICERS APPROVING THE COMPLIANCE
STATEMENT BETWEEN THE CITY OF SAN DIEGO, SAN
DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM, AND
THE INTERNAL REVENUE SERVICE.

WHEREAS, on July 12, 2005, the San Diego City Employees' Retirement System
[SDCERS] Board of Administration [Board] filed a Form 5300 application with the Internal
Revenue Service [IRS], seeking a favorable determination letter to confirm its tax-qualified
status; and

WHEREAS, on that same date, the Board also filed a request for a compliance statement
under the Voluntary Correction Program [VCP] of the IRS' Employee Plans Compliance
Resolution System, a program that allows a plan to voluntarily disclose to the IRS plan document
or operational qualification failures it has discovered in its plan, propose corrections and
ultimately receive IRS approval of corrections; and

WHEREAS, between July 2005 and August 2006, SDCERS filed eight supplemental
VCP filings that identified violations, and proposed corrections and remedial plan amendments;
and

WHEREAS, on December 18, 2007, the IRS issued a proposed Compliance Statement,
resolving all of SDCERS' VCP submissions; and

WHEREAS, on December 20, 2007, the Compliance Statement was signed by the Board President, on behalf of the Board, and by the City's Chief Operating Officer, on behalf of the City of San Diego; and

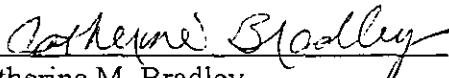
WHEREAS, the IRS signed the Compliance Statement on January 10, 2008; and

WHEREAS, it is appropriate for the Council of the City of San Diego to ratify the signature of the Chief Operating Officer approving the Compliance Statement on behalf of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council hereby ratifies the signature of the Chief Operating Officer approving the tri-party Compliance Statement between the City of San Diego, San Diego City Employees' Retirement System [SDCERS], and the Internal Revenue Service, entered into by the City and SDCERS on December 20, 2007 and the Internal Revenue Service on January 10, 2008.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Catherine M. Bradley
Chief Deputy City Attorney

CMB:als
03/27/08
Or.Dept:Mayor
R-2008-833

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor